

**IN THE HIGH COURT OF SINDH AT KARACHI**

C.P. No.S-874 of 2017

Ghazala  
Versus  
Samina Naz & others

A N D

C.P. No.S-758 of 2017

Mst. Ambreen  
Versus  
Hon'ble Court & others

Date of hearing: 07.11.2017

Petitioner in CP No.S-874 of 2017: Through Mr. S. Khizar Askar Zaidi Advocate

Petitioner in CP No.S-758 of 2017: Nemo

Respondents: Through Mr. Muhammad Khalid Advocate

**J U D G M E N T**

**Muhammad Shafi Siddiqui, J.**- The two subject petitions are filed against the same concurrent findings of two Courts below against the tentative rent order whereby on account of non-compliance of tentative rent order the defence was struck off and opponents/petitioners were directed to vacate the demised premises by Rent Controller in Rent Case No.425 of 2014 which order was maintained by the appellate Court in FRA No.59 of 2016. Petitioner in C.P. No.758 of 2017 is one of the legal heirs of Mehmood Hassan who was respondent No.2(i) in FRA No.59 of 2016 and opponent No.1(i) in Rent Case No.425 of 2014. No one appeared on behalf of petitioner in CP No.758 of 2017 while Mr. Khizar Askar Zaidi appeared on behalf of petitioner in CP No.874 of 2017, for the sake of brevity and convenience I would like to consider the facts as pleaded by Mr. Zaidi, to decide the two petitions.

Briefly stated the facts are that an application under section 15 of Sindh Rented Premises Ordinance, 1979 was filed by respondent No.1 for

ejection of the petitioner on the ground of default, subletting and personal requirement. The notices of the application were served upon the petitioner and the relationship of landlady and tenant was denied therein. The respondent also preferred an application under section 16(1) of Sindh Rented Premises Ordinance, 1979, which after considering the objections as raised by the petitioner as to payment of rent of the subject period, was allowed on 12.11.2015.

It is the case of the petitioner that before passing rent order the issue of relationship of landlady and tenant ought to have been decided by the Rent Controller.

It is further the case of the petitioner that he had already paid the rent to the previous rent controller i.e. Gulzar Ahmed and the receipts were attached with the objections to the application under section 16(1) of Sindh Rented Premises Ordinance, 1979 which were not considered and there was no justification of passing tentative rent order for the said period.

Learned counsel for the respondent has relied upon the contents of rent order whereby the petitioner was directed to deposit arrears of rent and submitted that there is no issue at all as far as relationship of landlady and tenant is concerned, and even otherwise before passing of tentative rent order the Rent Controller in the same order went on to observe the relationship between the landlady and tenant.

I have heard the learned counsel and perused the material available on record.

Along with the application of ejection respondent No.1 attached a copy of sale deed in favour of applicant/respondent, which is also available at page 33 of the file. The sale deed is dated 28.04.2007. The respondent No.1 conceded to the extent that rent up to December 2009 was paid to Gulzar. The Rent Controller while considering the objections

of the petitioner observed that the ownership of the respondent No.1 was not denied as being co-owner and that an affidavit was filed by Gulzar Ahmed who was previously issuing the receipts. He also claimed to have filed an affidavit to the effect that he has handed over subject premises to the applicant/respondent No.1 on 28.04.2007 and that such facts were brought to the knowledge of the petitioner in presence of the respondent No.1/applicant whereafter he never received rent and he denied to have executed any receipt thereafter and claimed that the two rent receipts are forged and fabricated. The opponent Ghazala, petitioner herein, has admitted in the written statement the receipts in the sum of Rs.1700/-, which apparently have no nexus/comparison with the quantum of rent agreed in the written statement. After considering all these facts and circumstances and more importantly to secure financial interest of landlady, a tentative rent order was passed to deposit the arrears at the rate of Rs.1700/- per month from June, 2013 till date as well as future rent at the same rate on or before 10<sup>th</sup> of each English Calendar month, though the respondent claimed rent at an exorbitant rate of Rs.10,000/- per month w.e.f. January 2009 yet on the basis of pleadings of the parties the petitioner was directed to deposit such arrears with a rider that rent will not be withdrawn till disposal of the case. In all fairness the petitioner ought to have deposited this amount in order to contest the case on merit, which was not done and hence the defence was struck off in the Rent Case which was also maintained in the appeal. Considering the facts of the case it was justified to pass a tentative rent order to secure the monetary interest of the respondent. While passing rent order, the Rent Controller also considered the relationship of parties and held that relationship of landlady and tenant existed as by virtue of execution of sale deed the lessee stepped into the shoes of previous landlord.

Learned counsel for petitioner while arguing his petition ultimately submitted that he may be allowed to deposit the rent now

with the condition that the respondent No.1 may not withdraw the same till disposal of the case. Perhaps the petitioner has not gone through the condition of the order passed by the Rent Controller under section 16(1) of Sindh Rented Premises Ordinance, 1979 as same restriction was imposed on the landlady/respondent (Rent Controller wrote withheld instead of withdrawn). It is thus nothing but a willful default and non-compliance of tentative rent order passed by the Rent Controller. The Rent Controller has also held the relationship of landlady and tenant between them as mentioned in the last para of the judgment.

No interference is required in respect of the concurrent findings of the two courts below and the defence was rightly struck off by the Rent Controller which order was upheld by the Appellate Court hence the petition bearing No.S-874 of 2017 is dismissed along with pending application.

Insofar as connected petition bearing No.758 of 2017 is concerned, although no one appeared on behalf of the petitioner however it appears that the impugned order passed by the Rent Controller was not challenged by way of filing an appeal and the petition was filed without exhausting the remedy of appeal and on this count alone the petition is not maintainable. Furthermore, since same judgments as impugned in CP No.874 of 2017 are challenged in CP No.S-758 of 2017, the same also stands dismissed along with pending applications.

Above are the reasons of my short order dated 07.11.2017 whereby both the petitions were dismissed.

Dated: 13.11.2017

**Judge**